

**BellSouth Telecommunications, Inc.**  
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June 28, 2001  
OFFICE OF THE  
EXECUTIVE SECRETARY  
615.214 6301  
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**VIA HAND DELIVERY**

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

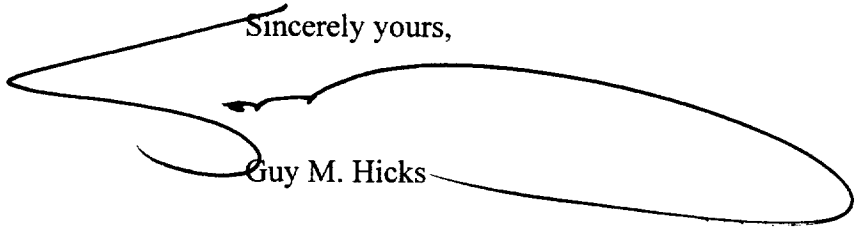
Re: *Approval of the Interconnection Agreement, together with the Amendment, Negotiated by BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996.*  
Docket No. 01-00407

Dear Mr. Waddell:

Pursuant to an agreement between BellSouth and Adelphia, enclosed please find an original and thirteen copies of a replacement for the General Terms and Conditions, Part A, which was filed on May 4, 2001. This replacement corrects an inaccurate reference to Attachment 10 in Paragraph 23.

Thank you for your attention to this matter.

Sincerely yours,

  
Guy M. Hicks

GMH/jej

Enclosure

cc: Terry J. Romine, Director, Legal and Regulatory Affairs, Adelphia  
Tamar E. Finn, Attorney for Adelphia

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and the telecommunications entities set forth below (collectively, “Adelphia”), and shall be deemed effective as of April 4, 2000. This Agreement may refer to either BellSouth or Adelphia or both as a “Party” or “Parties.”

Adelphia Business Solutions Operations, Inc.  
Adelphia Business Solutions of Nashville, LP

## WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina; and

WHEREAS, Adelphia is or seeks to become a competitive local exchange telecommunications company (“CLEC”) authorized to provide telecommunications services in the state of Tennessee; and

WHEREAS, the Parties wish to resell BellSouth’s telecommunications services and/or interconnect their facilities, purchase network elements and other services, and exchange traffic pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (“the Act”).

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Adelphia agree as follows:

**1. Purpose**

The resale, access and interconnection obligations contained herein are intended to be performed in accordance with Sections 251 and 252 of the Act, and designed to enable Adelphia to provide competing telephone exchange and exchange access service to subscribers within the territory of BellSouth.

**2. Term of the Agreement**

2.1 This Agreement shall be effective upon execution by both Parties, shall expire December 31, 2002, and shall apply to the state of Tennessee. Upon mutual written agreement of the Parties, this Agreement may be renewed for such additional period of time as the Parties may agree.

2.2 The Parties agree that if either Party provides notice of intent to renegotiate no later than one hundred and eighty (180) days prior, and no sooner than two hundred and seventy (270) days prior, to the expiration of this Agreement, they shall negotiate as soon as practicable with regard to the terms, conditions and prices of resale and/or local interconnection to be effective beginning on the expiration date of this Agreement (“Subsequent Agreement”). If as of the

expiration of this Agreement a Subsequent Agreement has not been executed by both of the Parties, this Agreement shall continue on a month-to-month basis until a Subsequent Agreement is negotiated or arbitrated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 2.4 below.

2.3 If, within one hundred and thirty-five (135) to one hundred and sixty (160) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to satisfactorily negotiate new resale and/or local interconnection terms, conditions and prices, either Party may petition the Commission to establish appropriate local interconnection and/or resale arrangements pursuant to 47 U.S.C. 252. The Parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate local interconnection and/or resale arrangements no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the local interconnection and/or resale arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement.

2.4 In the event that as of the date of expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and (i) the Parties are not involved in active good faith negotiations or mediation for a Subsequent Agreement and (ii) no arbitration proceeding has been filed in accordance with Section 2.3 above, then either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Adelphia pursuant to the terms, conditions and rates set forth in BellSouth's Statement of Generally Available Terms (SGAT) to the extent an SGAT has been approved by the applicable Commission(s). If any state Commission has not approved a BellSouth SGAT, then upon BellSouth's termination of this Agreement as provided herein, BellSouth will continue to provide services to Adelphia pursuant to BellSouth's then current standard interconnection agreement. In the event that the SGAT or BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement, and the terms of such Subsequent Agreement shall be effective retroactive to the day following expiration of this Agreement.

### **3. Ordering Procedures**

3.1 The Parties agree to adhere to the BellSouth Local Interconnection and Facility Based Ordering Guide, Products and Services Interval Guide, Resale Ordering Guide, Work Center Operational Understanding Agreement, and such other

BellSouth Guides referenced herein (together, “Guides”) as appropriate for the services ordered.

- 3.2 Adelphia shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachment 2, 3, 5 and 7 as applicable.

**4. Parity**

When Adelphia purchases, pursuant to Attachment 1 of this Agreement, telecommunications services from BellSouth for the purposes of resale to end users, BellSouth shall provide said services so that the services are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its affiliates, subsidiaries, end users or any other third-party carrier. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to Adelphia shall be at least equal in quality to that which BellSouth provides to itself. The quality of the interconnection between the networks of BellSouth and the network of Adelphia shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth’s network and shall extend to a consideration of service quality as perceived by end users and service quality as perceived by Adelphia.

**5. White Pages Listings**

BellSouth shall provide Adelphia and their customers access to white pages directory listings under the following terms:

- 5.1 Listings. Adelphia shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include Adelphia residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories. Directory listings will make no distinction between Adelphia and BellSouth subscribers. BellSouth shall use commercially reasonable efforts at parity to ensure the accurate listing of Adelphia customers.
- 5.2 Rates. Subscriber primary listing information in the White Pages shall be provided at no charge to Adelphia or its subscribers and Adelphia will provide subscriber listing information to BellSouth at no charge; provided however, that orders regarding directory listings submitted separately from service orders will incur charges as stated in BellSouth’s General Subscriber Services Tariff A.4.
- 5.3 Procedures for Submitting Adelphia Subscriber Listing Information are found in BellSouth’s Ordering Guide for manually processed listings and in the Local Exchange Ordering Guide for mechanically submitted listings.

- 5.3.1 Notwithstanding any provision(s) to the contrary, Adelphia agrees to provide to BellSouth, and BellSouth agrees to accept, Adelphia's Subscriber Listing Information (SLI) relating to Adelphia's customers in the geographic area(s) covered by this Interconnection Agreement. Adelphia authorizes BellSouth to release all such Adelphia SLI provided to BellSouth by Adelphia to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff, Section A38.2, as the same may be amended from time to time. Such CLEC SLI shall be intermingled with BellSouth's own customer listings of any other CLEC that has authorized a similar release of SLI. Where necessary, BellSouth will use good faith efforts to obtain state commission approval of any necessary modifications to Section A38.2 of its tariff to provide for release of third party directory listings, including modifications regarding listings to be released pursuant to such tariff and BellSouth's liability thereunder. BellSouth's obligation pursuant to this Section shall not arise in any particular state until the commission of such state has approved modifications to such tariff.
- 5.3.2 No compensation shall be paid to Adelphia for BellSouth's receipt of Adelphia SLI, or for the subsequent release to third parties of such SLI. Adelphia agrees that, to the extent BellSouth incurs costs to modify its systems to enable the release of Adelphia's SLI, or costs on an ongoing basis to administer the release of Adelphia SLI, Adelphia shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. Before BellSouth incurs any costs under this Section, it shall inform Adelphia of its good faith estimate of Adelphia's share of such costs, and Adelphia shall have the option of agreeing in writing to the costs, or of discontinuing BellSouth's release of Adelphia's SLI.
- 5.3.3 BellSouth shall not be liable for the content or accuracy of any SLI provided by Adelphia under this Agreement. Adelphia shall indemnify, hold harmless and defend BellSouth from and against any damages, losses, liabilities, demands claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate Adelphia listings or use of the SLI provided pursuant to this Agreement. BellSouth shall forward to Adelphia any complaints received by BellSouth relating to the accuracy or quality of Adelphia listings.
- 5.3.4 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.
- 5.3.5 If at any time during the term of this Agreement Adelphia elects to discontinue BellSouth's release of Adelphia SLI to third parties, Adelphia shall provide BellSouth 60 days prior written notice of such election and the Parties shall amend this agreement to effect such election.

- 5.4 Unlisted/Non-Published Subscribers. Adelphia will be required to provide to BellSouth the names, addresses and telephone numbers of all Adelphia customers that wish to be omitted from directories.
- 5.5 Inclusion of Adelphia Customers in Directory Assistance Database. BellSouth will include and maintain Adelphia subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and Adelphia shall provide such Directory Assistance listings at no recurring charge. BellSouth and Adelphia will formulate appropriate procedures regarding lead-time, timeliness, format, content, and correction of listing information.
- 5.6 Listing Information Confidentiality. BellSouth will accord Adelphia's SLI the same level of confidentiality that BellSouth accords its own SLI, and BellSouth shall limit access to Adelphia's SLI to those BellSouth employees who are involved in the preparation of listings.
- 5.7 Optional Listings. Additional listings and optional listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.
- 5.8 Delivery. BellSouth or its agent shall deliver White Pages directories to Adelphia subscribers at no charge and in the same manner, time and quantity as it provides its own customers.
6. **Bona Fide Request/New Business Request Process for Further Unbundling**
- 6.1 BellSouth shall, upon request of Adelphia, provide to Adelphia access to its network elements at any technically feasible point for the provision of Adelphia's telecommunications service in accordance with applicable law and Commission and FCC rules and orders. Any request by Adelphia for access to a network element, interconnection option, or for the provisioning of any service or product that is not already available shall be treated as a Bona Fide Request/New Business Request, and shall be submitted to BellSouth pursuant to the Bona Fide Request/New Business Request process set forth in Attachment 10.
7. **Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- To the extent technically feasible, where BellSouth provides resale or local switching to Adelphia, BellSouth maintains call detail records for Adelphia end users for limited time periods and can respond to subpoenas and court ordered requests for this information. BellSouth shall maintain such information for Adelphia end users for the same length of time it maintains such information for its own end users.
- 7.1 BellSouth will respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted

telephone numbers belong to Adelphia end users and where BellSouth maintains call detail records responsive to the law enforcement agency subpoena or court ordered request. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. If BellSouth does not maintain the call detail records, BellSouth will direct the law enforcement agency initiating the request to Adelphia.

- 7.2 Adelphia agrees that in cases where Adelphia receives subpoenas or court ordered requests for call detail records for targeted telephone numbers belonging to Adelphia end users, if Adelphia does not maintain the call detail records responsive to such requests, Adelphia will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth. Billing for call detail information will be generated by BellSouth and directed to the law enforcement agency initiating the request.
- 7.3 Adelphia will provide Adelphia end user and/or other customer information that is available to Adelphia in response to subpoenas and court orders for their own customer records. BellSouth will redirect subpoenas and court ordered requests for Adelphia end user and/or other customer information to Adelphia for the purpose of providing this information to the law enforcement agency.

## **8. Liability and Indemnification**

- 8.1 BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible Adelphia revenues. Adelphia shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible BellSouth revenues.
- 8.2 In the event that Adelphia consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of Adelphia under this Agreement.
- 8.3 Liability for Acts or Omissions of Third Parties. Neither BellSouth nor Adelphia shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.
- 8.4 Limitation of Liability.
- 8.4.1 Except in the event of the gross negligence or willful misconduct of the Party seeking to rely on the limitation of liability in this Section, each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorneys' fees, relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or performed improperly. To the extent that any other specific provision or provisions of this Agreement include a limitation of liability that is inconsistent

with this Section, the limitation of liability associated with such specific provision or provisions shall apply, rather than this Section, in the event of any claim arising under the specific provision or provisions. In addition, this limitation of liability shall not apply to a Party's indemnification obligations under this Agreement.

- 8.4.2 Limitations in Tariffs and Contracts. A Party may, in its sole discretion, provide in its tariffs and contracts with its Customer and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to Customer or third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) Consequential Damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such Loss. Any such tariff term or condition shall not modify the obligations of the Parties to each other under this Agreement and in the event of a conflict, this Agreement shall control.
- 8.4.3 Neither BellSouth nor Adelphia shall be liable for damages to the other's terminal location, POI or other Party's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to properly ground a local loop after disconnection.
- 8.4.4 Except in the case of willful misconduct or gross negligence, a Party shall not be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 8.5 Indemnification for Certain Claims. The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this



Agreement pertaining to claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications.

8.6 Nothing in this Agreement shall be construed to require indemnification in excess of that permitted by law and, to the extent any part of this Agreement is found to be invalid or unenforceable, the Parties agree that the obligation to indemnify under this Agreement shall be enforced to the fullest extent permitted in the relevant jurisdiction, excluding only such claims as are prohibited therein.

8.7 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## 9. **Intellectual Property Rights and Indemnification**

9.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Adelphia is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any BellSouth name, service mark or trademark. BellSouth is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any Adelphia name, service mark or trade mark.

9.2 Ownership of Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

9.3 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party

of such service and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 8 of this Agreement.

- 9.4 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense, but subject to the limitations of liability set forth below:
- 9.4.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 9.4.2 obtain a license sufficient to allow such use to continue.
- 9.4.3 In the event 9.4.1 or 9.4.2 are commercially unreasonable, then said Party may, terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 9.5 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 9.6 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
- 10. Proprietary and Confidential Information**
- 10.1 Proprietary and Confidential Information: Defined. It may be necessary for BellSouth and Adelphia, each as the "Discloser," to provide to the other party, as "Recipient," certain proprietary and confidential information( including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, , proposals, request for proposals, specifications, drawings, prices, costs, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the

Discloser's "Information"). All Information shall be provided to Recipient in written or other tangible or electronic form, clearly marked with a confidential and, proprietary notice. Information orally or visually provided to Recipient must be designated by Discloser as confidential and proprietary at the time of such disclosure and must be reduced to writing marked with a confidential and proprietary notice and provided to Recipient within thirty (30) calendar days after such oral or visual disclosure.

- 10.2 Use and Protection of Information. Recipient shall use the Information solely for the purpose(s) of performing this Agreement, and Recipient shall protect Information from any use, distribution or disclosure except as permitted hereunder. Recipient will use the same standard of care to protect Information as Recipient uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care. Recipient may disclose Information solely to the Authorized Representatives of the Recipient who (a) have a substantive need to know such Information in connection with performance of the Agreement; (b) have been advised of the confidential and proprietary nature of the Information; and (c) have personally agreed in writing to protect from unauthorized disclosure all confidential and proprietary information, of whatever source, to which they have access in the course of their employment. "Authorized Representatives" are the officers, directors and employees of Recipient and its Affiliates, as well as Recipient's and its Affiliates' consultants, contractors, counsel and agents. "Affiliates" means any company that is owned in whole or in part, now or in the future, directly or indirectly through a subsidiary, by a party hereto.
- 10.3 Ownership, Copying & Return of Information. Information remains at all times the property of Discloser. Recipient may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All such tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any information) will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such Information has been returned or destroyed.
- 10.4 Exceptions. Discloser's Information does not include: (a) any information publicly disclosed by Discloser; (b) any information Discloser in writing authorizes Recipient to disclose without restriction; (c) any information already lawfully known to Recipient at the time it is disclosed by the Discloser, without an obligation to keep confidential; or (d) any information Recipient lawfully obtains from any source other than Discloser, provided that such source lawfully disclosed and/or independently developed such information. If Recipient is required to provide Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, Recipient must first

provided Discloser with prompt written notice of such requirement and cooperate with Discloser to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, Recipient will continue to protect as confidential and proprietary all Information disclosed in response to a written court order, subpoena, regulation or process of law.

- 10.5 Equitable Relief. Recipient acknowledges and agrees that any breach or threatened breach of this Agreement is likely to cause Discloser irreparable harm for which money damages may not be an appropriate or sufficient remedy. Recipient therefore agrees that Discloser or its Affiliates, as the case may be, are entitled to receive injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy is not the exclusive remedy for any breach or threatened breach of this Agreement, but is in addition to all other rights and remedies available at law or in equity.

- 10.6 Survival of Confidentiality Obligations. The parties' rights and obligations under this Section 10 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

## 11. **Assignments**

- 11.1 Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate company of the Party without the consent of the other Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

## 12. **Resolution of Disputes**

- 12.1 Each Party agrees to notify the other Party in writing of a dispute concerning this Agreement.
- 12.2 Procedures for resolution of billing disputes are set forth in Section 3 of Attachment 7 of this Agreement.
- 12.3 Procedures for resolution of all disputes other than billing disputes are set forth below.
- 12.3.1 If the Parties are unable to resolve the issues relating to the dispute in the normal course of business within 60 days after delivery of notice of the dispute, each of

the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.

- 12.3.2 If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of designated representatives pursuant to Section 12.3.1, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.
- 12.3.3 Nothing in this Section shall be construed to preclude or limit either Party from seeking immediate injunctive relief from a court or agency with competent jurisdiction to the extent it deems necessary. Each Party reserves any rights it may have to seek judicial review of any ruling by the Commission concerning this Agreement.

### **13. Taxes**

- 13.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income, real, or personal property.
- 13.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.
- 13.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 13.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 13.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.
- 13.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

- 13.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Each Party will use its best efforts to ensure that any such taxes or fees are billed or presented in a timely manner. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 13.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 13.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 13.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 13.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 13.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 13.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.

- 13.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 13.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Each Party will use its best efforts to ensure that any such taxes or fees are billed or presented in a timely manner. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 13.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. If, after consultation in accordance with the preceding sentence, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the dispute resolution process outlined in this Agreement and Attachment 1. Utilization of the dispute resolution process shall not relieve the purchasing Party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.
- 13.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 13.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 13.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect indemnify and hold harmless (and defend at the purchasing Party's expense) the

providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

- 13.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

- 13.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

#### **14. Force Majeure**

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, strikes, boycotts, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. Each Party agrees to treat the other Party in parity with the manner in which it treats itself and any other entities with regard to a Force Majeure event.

#### **15 Modification of Agreement**

- 15.1 Upon written request, BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to Adelphia any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement. The Parties shall adopt all rates, terms and conditions that are legitimately related to the individual interconnection, service, or network element being adopted.



- 15.2 If either Party changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of that Party to notify the other Party of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.
- 15.3 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 15.4 Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).
- 15.5 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Adelphia or BellSouth to perform any material terms of this Agreement, Adelphia or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section 12.
- 15.6 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

16. **Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

17. **Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State in which the services described herein have been provided or in which the dispute arose.

18. **Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

19. **Notices**

- 19.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

**BellSouth Telecommunications, Inc.**

CLEC Account Team  
9<sup>th</sup> Floor  
600 North 19<sup>th</sup> Street  
Birmingham, Alabama 35203

and

General Attorney - COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**Adelphia Business Solutions**

Terry J. Romine  
Director, Legal and Regulatory Affairs  
One North Main Street  
Coudersport, PA 16915

and

Tamar E. Finn  
Swidler Berlin Shereff Friedman  
3000 K Street, N.W.  
Suite 300  
Washington, DC 20007

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 19.2 Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

- 19.3 BellSouth shall provide Adelphia notice via Internet posting of retail price changes and of changes to the terms and conditions of retail services available for resale.

20. **Rule of Construction**

- 20.1.1 No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

21. **Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

22. **Multiple Counterparts**

This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

23. **Implementation of Agreement**

Where the Parties have not already established a prior course of dealing, within 60 days of the execution of this Agreement, the Parties will adopt a schedule for the implementation of the Agreement. The schedule shall state with specificity time frames for submission of including but not limited to, network design, interconnection points, collocation arrangement requests, pre-sales testing and full operational time frames for interconnection of the Parties' networks.

24. **Interference or Impairment.**

- 24.1 Notwithstanding any other provisions of this Attachment, neither Party shall use any product or service provided under this Agreement, any other service related thereto or used in combination therewith, or place or use any equipment or facilities in any manner that: 1) significantly degrades, interferes with or impairs

service provided by the other Party or by any other entity or any person's use of its telecommunications service; 2) endangers or damages the equipment, facilities or other property of the other Party or of any other entity or person; 3) compromises the privacy of any communications; or 4) creates an unreasonable risk of injury or death to any individual or to the public. If either Party reasonably determines that any equipment or facilities of the other Party violates the provisions of this paragraph, the complaining Party shall give written notice to the violating Party, which notice shall direct the violating Party to cure the violation within forty-eight (48) hours of receipt of such written notice or, at a minimum, to commence curative measures within 24 hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. Upon the violating Party's receipt of the notice, the Parties agree to consult immediately and, if necessary, to inspect the arrangement.

24.2 Except in the case of the deployment of an advanced service which significantly degrades the performance of other advanced services or traditional voice band services as described in Section 24.3 below, if the violating Party fails to take curative action within 48 hours, or if the violation is of a character which poses an immediate and substantial threat of damage to property, injury or death to any person, or in the event of any other impairment or interference with the complaining Party's service or network or the service or network of any other entity, then the complaining Party may take such reasonable action as it deems appropriate to correct the violation, including without limitation discontinuance of services to the violating Party and/or requesting expedited Commission resolution of the matter; provided, however, that neither Party shall have the right to interrupt electrical power to the other Party's equipment. The complaining Party will endeavor but is not required, to provide notice to the violating Party prior to taking such action. Upon the violating Party's correction of the interference or impairment, the complaining Party will promptly restore any discontinued services. During such period of suspension or interruption, there will be no compensation or credit allowance by the complaining Party to the violating Party, unless it is shown that the suspension or interruption in service by the complaining Party was unreasonable or unwarranted. The complaining Party shall not be liable to the violating Party for any damages arising from action taken under this Section 24, except to the extent that such action by the complaining Party constitutes gross negligence or willful misconduct.

24.3 For purposes of this Section 24, the term "significantly degrade" shall mean an action that noticeably impairs a service from a user's perspective. Notwithstanding anything to the contrary in Section 24.2 above, in the case of the deployment of an advanced service which significantly degrades the performance of other advanced services or traditional voice band services and where the violating Party fails to take curative action within 48 hours, the complaining Party will establish before the relevant state commission that the technology deployment is causing the significant degradation. Any claims of network harm presented to the violating Party or, if subsequently necessary, the relevant state

Commission, must be supported with specific and verifiable information. Where the complaining Party demonstrates that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services, the violating Party shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services. Where the only degraded service itself is a known disturber, and the newly deployed technology satisfies at least one of the criteria for a presumption that is acceptable for deployment under section 47 C.F.R. 51.230, the degraded service shall not prevail against the newly-deployed technology.

**25. Filing of Agreement**

- 25.1 Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Adelphia shall be responsible for publishing the required notice and the publication and/or notice costs shall be split equally between BellSouth and Adelphia.

**26. Guides**

This Agreement contains reference to numerous Guides maintained by BellSouth, including, but not limited to, the BellSouth Local Interconnection and Facility Based Ordering Guide, BellSouth Resale Ordering Guide, BellSouth Products and Services Interval Guide, and the BellSouth Facility Based CLEC Activation Requirements Customer Guide (together, "Guides"). Where this Agreement references any BellSouth Guides, the Parties agree to adhere to such Guides, provided that these Guides do not affect the substantive rights and obligations of the Parties under this Agreement. In the event of a conflict between this Agreement and any Guides, this Agreement controls.

**27. Entire Agreement**

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior Agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.